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MEMORANDUM OF LAW

DATE: January 4, 2000
NAME: Honorable Mayor Susan Golding
FROM: City Attorney
SUBJECT: San Diego Police Department Use of Force Policy

INTRODUCTION

On November 17, 1999, you met with City Manager Michael T. Uberuaga, Chief of Police David Bejarano, Deputy City Attorneys Frank Devaney and Gene Gordon, and members of your staff to discuss the scheduling of an open City Council meeting/workshop regarding the San Diego Police Department's Use of Force Policy. During that meeting, you asked for a legal opinion whether the City Council may direct the City Manager and Chief of Police to make specific changes to the Use of Force Policy.

ANALYSIS

The City Charter makes absolutely no provision for any role for the City Council in the administrative affairs of the City including the policies of the San Diego Police Department. The City Charter provides that the City Council is the legislative body of the City. The City Charter places the sole responsibility for administering the affairs of the City in the City Manager and certain other officers of the City. Section 57 of the Charter provides that the Chief of Police shall be appointed by the City Manager and "[t]he Chief of Police shall have all power and authority necessary for the operation and control of the Police Department."

In Opinion Number 86-7, dated November 26, 1986, this Office did an extensive analysis of the respective roles of the members of the City Council and the City Manager. (A copy of that opinion is attached hereto as Attachment A.)

Quoting briefly, from that opinion, we stated as follows:

The City Council-City Charter Provisions

The Charter of The City of San Diego contains several references concerning the appropriate role of the members of the City Council. Section 11 of the Charter provides, in pertinent part, that all legislative powers of the City shall be vested, subject to the terms of the Charter and of the State Constitution, in the Council. Section 12 states very clearly that the Council shall be comprised of nine (9) Council members, including the Mayor; that it shall be the legislative body of the City; that each of the members, including the Mayor, shall have the right to vote upon all questions before it and the duty to attend all Council meetings. Section 13 provides that all legislative action shall be by ordinance or as otherwise provided by the State Constitution or State law.

A review of every provision and section of the Charter discloses not one provision that can be construed as authorizing any role by the Council in any role other than as a legislative body, acting in concert. For example, Section 15 provides that a majority of the members elected shall constitute a quorum to do business and that the affirmative vote of a majority of the members elected is necessary for passage of any ordinance, resolution, order or vote.

The City Manager-City Charter Provisions

By the same token, we submit to you that the Charter of The City of San Diego is abundantly clear as to the appropriate role of the City Manager as it pertains to the affairs of this City. Section 27 provides that the City Manager shall be elected by the City Council and that he shall be the chief administrative officer of the City, serving at the pleasure of the Council. Section 28 states that the City Manager shall supervise the administration of the affairs of the City except as otherwise specifically provided in this Charter.

It continues by providing that all other administrative powers conferred by State law shall be exercised by the Manager and his designated representatives. Section 29 requires the City Manager to properly administer all the affairs of the City placed in his charge and be responsible to the City Council for the conduct of those affairs (footnote omitted).

CONCLUSION

In conclusion, it is our opinion that the City Council may not direct the City Manager and Chief of Police to make specific changes to the San Diego Police Department's Use of Force Policy.

CASEY GWINN, City Attorney

/ S/

By

Stuart H. Swett
Deputy City Attorney

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Attachment

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